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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 CHRISTOPHER ANDREW BISTRYSKI,

10 Plaintiff,

11 v.

12 DEPARTMENT OF HEALTH SERVICES
13 OF STAFFORD CREEK CORRECTIONS
14 CENTER, et al.,

Defendants.

CASE NO. 3:17-cv-5369 RJB-TLF

ORDER TO AMEND COMPLAINT

15 This is a civil rights action brought pursuant to 42 U.S.C. § 1983. Plaintiff Christopher
16 Andrew Bistryski is incarcerated at the Monroe Correctional Complex-Special Offender Unit
17 (MCC-SOU). Dkt. 32 at 7, ¶ 29. He sues multiple defendants for damages and injunctive relief,
18 asserting that defendants have violated his right to adequate medical care under the Eighth
19 Amendment. Dkt. 32, pp. 15-16. He is proceeding with this action *pro se* and *in forma pauperis*.

20 On April 18, 2018, the undersigned magistrate judge entered an Order to Show Cause
21 why Plaintiff's claims against the remaining two defendants, Allbert and Hammond, should not
22 be dismissed for failure to state a claim. Dkt. 56. Plaintiff did not respond to that order to show
23 cause by the deadline. The undersigned entered a Report and Recommendation, recommending

1 that the Court dismiss the claims against Albert and Hammond. Dkt. 59. Plaintiff then filed
2 objections to the Report and Recommendation, including as an attachment additional allegations
3 and arguments that, he stated in a declaration, he had attempted to file in response to the Order to
4 Show Cause. Dkt. 60.

5 Based on Plaintiff's objections, the Court declined to adopt the Report and
6 Recommendation. Dkt. 62. In that Order, the Court found that new allegations contained in the
7 objections "state a colorable claim that [defendant Allbert] was deliberately indifferent to
8 Plaintiff's serious medical needs." Dkt. 62, p. 7. The Court therefore declined to dismiss claims
9 against Allbert. With respect to allegations concerning defendant Hammond's personal
10 participation, the Court observed that in Plaintiff's objections he "clarifies that Defendant
11 Hammond is being sued for voting to deny him access to a neurologist." Dkt. 62, p. 8. The Court
12 therefore declined to dismiss Hammond, as well.

13 The Court found that "[b]ased on Plaintiff's objections, further amendment may cure the
14 defects in the Amended Complaint. Plaintiff should be afforded an opportunity to file a second
15 amended complaint." *Id.*

16 Plaintiff states in his objections that he hopes to acquire new evidence and add it to an
17 amended complaint in September or October 2018. Dkt. 60-1, p. 14. The Court's Order
18 Declining to Adopt the Report and Recommendation indicates that the complaint, together with
19 Plaintiff's objections, may already state a claim for relief. Dkt. 62, pp. 7-8. Plaintiff's original
20 complaint was filed one year ago. Dkt. 6. Plaintiff is allowed eight weeks to file his second
21 amended complaint. Plaintiff will of course have the opportunity to develop his claims in
22 discovery and, if he shows at a later time that additional amendments are warranted, he may
23 make a motion to amend the complaint again.

1 Pursuant to the Court's Order Declining to Adopt the Report and Recommendation, Dkt.
2 62, the Court ORDERS as follows:

- 3 1. Plaintiff is directed to file a second amended complaint setting forth facts that
4 state a cause of action against each of the defendants, Allbert and Hammond.
- 5 2. Plaintiff must file the second amended complaint on or before **September 7,**
6 **2018. The second amended complaint will act as a complete substitute for the**
7 **original and not as a supplement.**

8 The Clerk is directed to send a copy of this Order to Plaintiff.

9 Dated this 13th day of July, 2018.

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11 Theresa L. Fricke
12 United States Magistrate Judge
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